

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	
LITIGATION)	MDL No. 1456
)	
)	
)	Civil Action No. 01-12257-PBS
THIS DOCUMENT RELATES TO:)	Subcategory No. 06-11337-PBS
<i>United States of America ex rel. Ven-a-Care of</i>)	
<i>the Florida Keys, Inc. v. Baxter Healthcare Corp.</i>)	Hon. Patti B. Saris
<i>and Baxter International, Inc., No. 10-11186-PBS</i>)	

**UNITED STATES' NOTICE OF FILING
OF STATEMENT OF INTEREST IN ANOTHER CASE**

The United States hereby notifies the Court that the United States previously filed a Statement of Interest in another unrelated case that may bear on certain issues addressed at the hearing held on November 28, 2012. A copy of that Statement of Interest is attached as Exhibit A.

At the November 28, 2012, hearing, the Court addressed, among other things, further proceedings concerning the application of the False Claims Act's "first to file" rule, 31 U.S.C. § 3730(b)(5). The Court established a discovery schedule for purposes of additional fact-finding in order to resolve the first-to-file issue.

After the November 28 hearing, the undersigned Assistant U.S. Attorney became aware that the United States had previously filed a statement of interest in another case in which the United States took the position that the analysis of whether a particular relator's complaint is barred by the first-to-file rule should focus solely on the text of the complaints themselves, and that discovery is therefore inappropriate in resolving that issue. *See United States ex rel. Duxbury v. Ortho Biotech Products, L.P.*, 579 F.3d 13 (1st Cir. 2009). The United States

believes it appropriate to advise the Court of the position previously taken, and that the United States continues to adhere to it.¹

Dated: November 30, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above document to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ George B. Henderson, II
George B. Henderson, II
Assistant U.S. Attorney

Dated: November 30, 2012

¹ The undersigned counsel regrets that he was unable to advise the Court of this position at the time of the November 28, 2012, hearing. As stated at the hearing, the United States takes no position on the first-to-file issue.